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13 RAMESH “SUNNY” BALWANI

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 UNITED STATES OF AMERICA,
18 Plaintiff,
19 v.
20 RAMESH “SUNNY” BALWANI,
21 Defendant.

Case No. 18-CR-00258-EJD

**DEFENDANT RAMESH “SUNNY”
BALWANI’S ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL EXPERT
DECLARATION**

Judge: Honorable Edward J. Davila

1 Defendant Ramesh “Sunny” Balwani moves under Criminal Local Rule 2-1 and Civil
 2 Local Rule 7-11 for leave to file a supplemental expert declaration in support of his sentencing
 3 position and in response to the supplemental expert declaration submitted by the government on
 4 December 2, 2022. *See* Dkt. 1674-1.

5 As the Court knows, the determination of loss associated with a fraud conviction can
 6 have an outsized effect on determining the Guidelines sentencing range. The losses claimed by
 7 the government here would, if accepted, lead to a 30-point increase in Mr. Balwani’s offense
 8 level. *See* Dkt. 1661 at 21. And the loss calculated by the Court during the Holmes’ sentencing
 9 led to a 24-point increase in her offense score. *See* Dkt. 1660; U.S.S.G. § 2B1.1(b)(1)(M);
 10 U.S.S.G. Sentencing Table. These enhancements translate to years of incarceration under the
 11 Guidelines.

12 On December 2, 2022, the government submitted a supplemental declaration of its loss
 13 expert, Carl Saba, responding to the declarations of the defense’s experts Scott Weingust and
 14 Toby Reiff. *See* Dkt. 1674-1. Attached to the concurrently filed declaration of Jeffrey B.
 15 Coopersmith is a supplemental declaration of Scott Weingust identifying unsupported and
 16 mistaken claims in Mr. Saba’s supplemental report. *See* Coopersmith Decl., Ex. 1. Due process
 17 and fundamental fairness preclude sentencing Mr. Balwani based on materially incorrect
 18 information, *see United States v. Petty*, 982 F.2d 1365, 1369 (9th Cir. 1993), and support
 19 allowing Mr. Weingust’s supplemental declaration rebutting Mr. Saba’s analysis to be filed for
 20 consideration at Mr. Balwani’s sentencing.

21 Dated: December 6, 2022

Respectfully submitted,
 ORRICK, HERRINGTON & SUTCLIFFE LLP

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 24 *s/Jeffrey B. Coopersmith*
 JEFFREY B. COOPERSMITH

25 Attorney for Defendant
 26 RAMESH “SUNNY” BALWANI